

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ISAAC GAYDEN,)
)
)
Plaintiff,)
)
)
v.) No. 09 C 7557
)
)
CHICAGO POLICE OFFICERS)
MARIANO (STAR #6691), et al.,)
)
)
Defendants.)

MEMORANDUM ORDER

City of Chicago and three of its police officers, all of them targets of this 42 U.S.C. §1983 action brought against them by Isaac Gayden ("Gayden"), have filed their collective Answer to Gayden's First Amended Complaint ("FAC"). This memorandum order is triggered by two problematic aspects of that responsive pleading, one relating to the Answer itself and the other regarding an accompanying affirmative defense ("AD").

As for the first of those, Answer ¶3 shows that defense counsel is well aware of the specific terms of the disclaimer prescribed in Fed. R. Civ. P. ("Rule") 8(b)(5). Yet Answer ¶¶8 and 9 mysteriously depart from those terms of the required disclaimer--see App'x ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). Accordingly Answer ¶¶8 and 9 are stricken.

As for the AD, which advances a possible mitigation of damages defense, it employs the telltale "[t]o the extent" phrase that is the sure tipoff that nothing but sheer speculation is at

work on that score. That AD is stricken, but without prejudice to a possible reassertion of that contention if the facts as fleshed out during the course of discovery reveal a legitimate good faith basis for doing so (see Rule 11(b)).



Milton I. Shadur
Senior United States District Judge

Date: August 31, 2010